

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

RICHARD FERNBACH,

Petitioner,

-vs-

LAWRENCE MACK, Warden,

Respondent.

:

Case No. 3:10-CV-040

:

Magistrate Judge Michael R. Merz

:

DECISION AND ORDER

This habeas corpus action is before the Court on Petitioner's Objection (Doc. No. 36) to the Magistrate Judge's Decision and Order (Doc. No. 35) denying Petitioner's Motion to Vacate pursuant to Fed. R. Civ. P. 60 (Doc. No. 34).

First of all, the Court wishes to apologize to Petitioner for the misstatement of his name throughout the most recent Decision and Order. This was not intentional. Some software bug substituted "FORBACH" for Petitioner's name everywhere in the document.

Because the parties unanimously consented to plenary magistrate judge jurisdiction under 28 U.S.C. § 636(c) and the case was referred on that basis (Doc. No. 6), there is no procedural right to file objections because there is no provision for District Judge review in a full consent case. Rather than striking the Objections, however, the Magistrate Judge will consider them on the merits as if Petitioner had filed a motion for reconsideration.

Petitioner's theory for why this Court's judgment is void for lack of jurisdiction is that his

judgments of conviction on the crimes of which he was convicted themselves are void for failing to include several matters required by Ohio law, the Due Process Clause of the Fourteenth Amendment, and unspecified provisions of the Ohio Constitution (Objections, Doc. No. 36, Page ID 737). He now advises the Court that he has raised the underlying claims by seeking relief from the Ohio Twelfth District Court of Appeals and the Warren County Common Pleas Court on April 12, 2012. *Id.* at PageID 739.

In order to allow Petitioner an opportunity to obtain consideration of his Ohio law (and any attendant federal constitutional law) questions in the first instance from the state courts, consideration of Petitioner's Objections will be held in abeyance, as he has requested, pending decisions by the Ohio courts. This case is stayed pending those decisions (and any decisions made on appeal). Petitioner is ordered to furnish this Court with copies of the filings made in the Ohio courts to date and to keep this Court currently advised of new filings and any decisions from those courts.

May 7, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge